authorized a city to regulate billboards, then of course the only question is whether or not the ordinance is in conflict with the state or federal constitution. *Phillips* v. *Denver* (1893), 19 Colo. 179, 34 Pac. 902, 41 Am. St. Rep. 230. In *City of Rochester* v. *West* (1900), 164 N. Y. 510, 58 N. E. 673, 53 L. R. A. 548, 79 Am. St. Rep. 659, the ordinance involved was expressly authorized by the city charter. It was not prohibitive but required that billboards exceeding six feet in height should not be erected without a permit from the common council. But ordinances which provide that no billboard, however safe, shall be erected unless it is placed at a specified distance from the line of the street are "unwarranted invasions of private right" and void. *Crawford* .v *City of Topeka* (1893), 51 Kan. 756, 33 Pac. 476, 20 L. R. A. 692, 37 Am. St. Rep. 323; *Chicago* v. *Gunning System* (1905), 214 Ill. 628, 73 N. E. 1035, 70 L. R. A. 230; *Bryan* v. *Chester* (1905), 212 Pa. St. 259, 61 Atl. 894, 108 Am. St. Rep. 870; *Commonwealth* v. *Boston Ad. Co.* (1905), 188 Mass. 348, 74 N. E. 601, 69 L. R. A. 817, 108 Am. St. Rep. 494; *Bill Posting Sign Co.* v. *Atlantic City* (1904), 71 N. J. L. 72, 58 Atl. 342. Opposed to all these authorities is the case of *In re Wilshire* (1900), 103 Fed. 620, in which an ordinance which limited the height of billboards to six feet from the ground was held valid.

MUNICIPAL CORPORATIONS—CRUEL AND UNUSUAL PUNISHMENT FOR VIOLATING ORDINANCE—TRIAL BY JURY.—One convicted of violating an ordinance of Atlanta which prohibited the sale of intoxicating liquors, was ordered to pay a fine of $500 and sentenced to work 30 days on the streets. On an application for a writ of habeas corpus, based upon the ground that the fine was excessive, the punishment cruel and unusual, and the trial without jury in violation of the state and federal constitutions, *held,* that the ordinance was valid, and that the constitutional provision "no person shall be deprived of life, liberty or property without due process of law" does not guarantee a trial by jury to one charged with the violation of a valid municipal ordinance. *Loeb* v. *Jennings* (1910), — Ga. —, 67 S. E. 101.

An act of the General Assembly, passed in 1874, gave authority to the city of Atlanta to punish the violation of its ordinances by a fine not exceeding $500 and imprisonment in the calaboose not exceeding 30 days. The ordinance in question was passed in pursuance of this act, and § 1537 of the City Code of Atlanta, which provides that the recorder may in his discretion pass sentence for an illegal keeping or sale of intoxicating liquors. That this imprisonment consisted in taking the prisoner out to the city stockade, in a caged wagon, where he was then shackled and put to work, under a guard with a shot gun and also under a "whipping boss," did not make the punishment cruel and unusual, for it was in accordance with the general system of convict labor in the state. Such punishment must, however, be held within legitimate bounds. *Whitten* v. *State,* 47 Ga. 297; *In re Kemmler,* 136 U. S. 436, 10 Sup. Ct. 930, 34 L. Ed. 519, and any unlawful violence to the prisoner is a punishable offense. As such punishment is not cruel or unusual according to the state constitution, that objection to the ordinance is not well taken, for the similar provision in the United States Constitution refers to powers

exercised by the government of the United States, and not to those of the individual states. *Eilenbecker* v. *District Court of Plymouth County,* 134 U. S. 31, 10 Sup. Ct. 424, 33 L. Ed. 801. The decision that such a trial without a jury does not violate the state or federal constitutional provisions against depriving a person of life, liberty or property without due process of law, is in accordance with the decisions in its own and other states. *Hood* v. *Von Glahn,* 88 Ga. 405, 14 S. E. 564; *Duren* v. *The City of Thomasville,* 125 Ga. 1, 53 S. E. 814; *People* v. *Dutcher,* 83 N. Y. 240; *McInerey* v. *Denver,* 17 Colo. 302, 29 Pac. 516; *Ogden* v. *Madison,* 111 Wis. 413, 87 N. W. 568, 55 L. R. A. 506.

MUNICIPAL CORPORATIONS—ORDINANCES—EXERCISE OF POLICE POWER.—The defendant in violation of a municipal ordinance which prohibited the erection of cotton gins within prescribed limits, on the ground that they were nuisances, was erecting a steam cotton gin. The plaintiff sought by injunction to restrain him. Power to regulate cotton gins was not expressly conferred on the town. *Held,* that as the erection of the gin was not a nuisance per se, the ordinance as an exercise of the general police power of the town was too broad and hence invalid. (MCCULLOCH, C.J., and BATTLE, J., dissenting.) *Swaim et al.* v. *Morris* (1910), — Ark. —, 125 S. W. 432.

The power to prevent and abate nuisances which is ordinarily given to municipal corporations is limited to cases of actual nuisance, and "does not give power to declare a thing to be a nuisance which is not one by nature, even though it might under certain circumstances become one." *Des Plaines* v. *Poyer,* 123 Ill. 348, 14 N. E. 677, 5 Am. St. Rep. 524; *Ex Parte O'Leary,* 65 Miss. 80, 7 Am. St. Rep. 640; *Tissot* v. *Great South. Tel. Co.,* 39 La. Ann. 996, 4 Am. St. Rep. 248; *State* v. *Mott,* 61 Md. 297, 48 Am. Rep. 105; *Cole* v. *Kegler,* 64 Iowa 59; *Wygant* v. *McLaughlan,* 39 Ore. 429, 64 Pac. 867, 54 L. R. A. 636; *Western etc. R. Co.* v. *Atlanta,* 113 Ga. 537, 38 S. E. 996, 54 L. R. A. 294; *Passaic* v. *Paterson Bill Posting Co.,* 72 N. J. L. 285, 62 Atl. 267, 111 Am. St. Rep. 676; *Chicago* v. *Gunning System,* 214 Ill. 628, 73 N. E. 1035, 70 L. R. A. 230. Nuisances which are such by nature or as they are frequently called, nuisances per se, are such as are not permissible "under any circumstances regardless of location or surroundings." *Windfall Mfg. Co.* v. *Patterson,* 148 Ind. 414, 62 Am. St. Rep. 532. An ordinance cannot make that a nuisance per se which is not a nuisance per se at common law or under a statute. *Grossman* v. *Oakland,* 30 Ore. 478, 41 Pac. 5, 60 Am. St. Rep. 832, 36 L. R. A. 593. Moreover, a legislature cannot authorize a municipal corporation to make that a nuisance which in fact is not a nuisance, "if by so doing it infringes upon constitutional rights." *Grand Rapids* v. *Powers,* 89 Mich. 94, 50 N. W. 661, 14 L. R. A. 498.

PRINCIPAL AND SURETY—CONSTRUCTION OF NEGOTIABLE INSTRUMENTS LAW —EXTENDING TIME OF PAYMENT OF NOTE—SURETY NOT DISCHARGED.—Plaintiff brings suit to recover the amount of a promissory note. From the face of the note the defendant's name appeared as one of the makers, but in fact he was a surety. Plaintiff, the original holder with knowledge of this fact at